

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

KOGAN AUSTRALIA PTY. LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:23-cv-576
	)	
NBG TRADE LLC,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff Kogan Australia Pty. Ltd. (“Kogan”), by its attorneys, for its Complaint against NBG Trade LLC (“NBG”), states as follows:

**Nature of the Action**

1. This is a breach of contract action to recover the more than \$900,000 in principal plus accrued interest, attorneys’ fees, and costs that NBG owes Kogan as a result of NBG’s failure to fulfill purchase orders placed by Kogan under the parties’ Supply Agreement attached as Exhibit A (the “Supply Agreement”).

**Parties**

2. Plaintiff Kogan is a proprietary limited company engaged in the business of online retail located in Australia.

3. Defendant NBG is a limited liability company organized under the laws of the state of New York with its principal place of business located at 448 Montgomery Street, Brooklyn, New York 11225.

### **Jurisdiction and Venue**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(2) because it is a controversy between a citizen of New York and a citizen of Australia, and the amount in controversy, exclusive of interests and costs, exceeds \$75,000.

5. This Court has personal jurisdiction over NBG because NBG's principal place of business is in New York.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because NBG resides in this District.

### **Factual Background**

#### **The Supply Agreement**

7. In February 2019, NBG and Kogan entered into the Supply Agreement attached as Exhibit A.

8. The Supply Agreement "outlines the terms that govern the... supply of all products procured by Kogan from [NKG]" and "applies to all orders of Products that Kogan places with [NKG]." Ex. A at §§ 1-2.

9. In order to place an order with NBG, Kogan is to "provide [NKG] with a formal Purchase Order document." Ex. A at § 8(a).

#### **Kogan's Orders**

10. Between February 2021 and January 2022, Kogan placed five orders for merchandise with NBG (the "Orders"). True and correct copies of each of the five purchase orders are attached as Exhibits B through F.

11. Kogan paid deposits on each of the Orders totaling approximately \$911,834, broken down as follows:

Purchase Order No.	Deposit Amount
200934	\$36,238
204817	\$308,226
243545	\$256,005
378311	\$196,365
414028	€105,918

12. NBG never fulfilled the Orders. To date, Kogan has not received a single item of merchandise from NBG as part of any of the Orders.

13. Kogan consistently attempted to contact individuals at NBG regarding the Orders through email, WhatsApp messages, and phone calls. NBG either failed to respond entirely, or failed to provide updates on the status of the Orders.

14. Kogan last heard from NBG on October 3, 2022.

15. On November 14, 2022, counsel for Kogan sent a letter to Dov Zaetz, NBG's co-founder and Kogan's primary NBG contact, requesting a refund of the deposits. A true and correct copy of that letter is attached as Exhibit G.

16. Counsel for NBG contacted Kogan's counsel regarding the letter on November 18, indicating he was investigating the matter and would reconnect after Thanksgiving. Kogan has not received any further communication from NBG or NBG's counsel.

### **COUNT I – BREACH OF CONTRACT**

17. Kogan hereby incorporates by reference the allegations in paragraphs 1-16.

18. The Supply Agreement is a valid and binding contract between Kogan and NBG.

19. Kogan has fully performed its obligations under the Supply Agreement.

20. NBG breached the Supply Agreement by failing to fulfill the Orders.

21. The Supply Agreement provides that NBG is "liable for... any liability and/or any loss or damage of any kind whatsoever suffered by Kogan, arising directly or indirectly from...

[NBG's] failure to perform... its obligations under [the Supply Agreement]" or "any breach by [NBG] of the terms of [the Supply Agreement]." Ex. A at § 18.

22. As a result of NBG's breach of the Supply Agreement, Kogan was damaged in the amount of \$911,834 for the deposits paid for the Orders, plus interest, attorneys' fees, and costs incurred in recovering the amounts owed.

WHEREFORE, Kogan prays for judgment in its favor and against NBG as follows:

- a. Finding that NBG is liable for the \$911,834 in deposits paid by Kogan;
- b. Finding that NBG is liable for pre-judgment interest accruing on the deposit amounts;
- c. Finding that NBG is liable for Kogan's attorneys' fee and costs incurred in recovering the amounts owed; and
- d. Granting Kogan such other and further relief as this Court deems just and proper.

Dated: January 26, 2023

Respectfully submitted,

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By: /s/ Shawn A. Brenhouse  
Shawn A. Brenhouse  
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